

GABRIEL M. RAMSEY (SBN 209218)
gramsey@crowell.com
JOACHIM B. STEINBERG (SBN 298066)
jsteinberg@crowell.com
CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
San Francisco, CA 94111
Telephone: 415.986.2800
Facsimile: 415.986.2827

Attorneys for Defendant
ERIC BRAVICK

Bradford K. Newman, State Bar No. 178902
bradford.newman@bakermckenzie.com

BAKER & McKENZIE LLP
600 Hansen Way
Palo Alto, CA 94304-1044
Telephone: +1 650 856 2400
Facsimile: +1 650 856 9299

Christina M. Wong, State Bar No. 288171
christina.wong@bakermckenzie.com

BAKER & McKENZIE LLP
2 Embarcadero Center, Floor 11
San Francisco, CA 94111
Telephone: +1 415 576 3000
Facsimile: +1 415 576 3099

Attorneys for Plaintiff
DFINITY USA RESEARCH, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DFINITY USA RESEARCH, LLC, a limited
liability company,

Plaintiff,

v.

ERIC BRAVICK, an individual and DOES 1
through 100, inclusive,

Defendant.

Case No. 5:22-cv-03732-EJD

**JOINT STATEMENT IN RESPONSE
TO ORDER TO SHOW CAUSE**

Complaint filed: May 11, 2022

1 By and through their respective counsel, Plaintiff DFINITY USA Research, LLC
 2 (“DFINITY”) and Defendant Eric Bravick (“Bravick”) (collectively, “Parties”) submit this joint
 3 statement in response to the Order to Show Cause re Settlement (Dkt. Nos. 25 and 27).

4 **A. Status of the Settlement Agreement**

5 Although the Parties agreed in principle upon the economics of a settlement and expectation
 6 that a written settlement agreement would be prepared, the Parties have since exchanged multiple
 7 settlement agreement iterations and have agreed in principle on all but one term of the settlement—
 8 the scope and nature of the release.

9 **1. Plaintiff’s Substantive Position**

10 In response to DFINITY’s multiple demands that Defendant Bravick return the nearly
 11 \$200,000 worth of computer hardware that DFINITY sent to him while he was employed by
 12 DFINITY and working from home during the COVID era, Defendant Bravick refused to return the
 13 equipment, forcing DFINITY to file this lawsuit in May 2022.

14 Nearly a year into this lawsuit, on March 30, 2023, Defendant Bravick agreed to a monetary
 15 settlement of this case. Accordingly, on April 12, DFINITY filed a notice of settlement with the
 16 Court indicating that the parties had reached an agreement in principle and expected to finalize a
 17 settlement agreement within 30 days. (Dkt 24.) The Court issued an order vacating all pretrial
 18 dates and ordered the parties to file a joint statement regarding the status of settlement efforts on or
 19 before May 19. (Dkt. 25.)

20 On March 30, Defendant Bravick sent a draft settlement agreement to DFINITY for the
 21 agreed monetary amount and a unilateral release of DFINITY’s claims including a unilateral release
 22 and waiver of California Civil Code section 1542 by DFINITY. On April 21, DFINITY sent its
 23 own draft settlement agreement to Defendant Bravick for the agreed monetary amount and with
 24 standard settlement terms, including full mutual releases by both parties and waivers of California
 25 Civil Code section 1542. The mutual release terms are necessary and appropriate to resolve this
 26 dispute in light of Defendant Bravick’s previous and repeated threats that he plans to assert
 27 unspecified counterclaims against DFINITY.

1 Defendant Bravick responded to DFINITY's draft settlement agreement stating that, among
 2 other things, he would not agree to a mutual release of claims. In an effort to accommodate
 3 Defendant Bravick's position, on May 10, DFINITY proposed additional edits to the draft
 4 settlement agreement whereby DFINITY would provide a limited release of its claims asserted in
 5 the complaint but would not release unknown claims or provide a Section 1542 waiver and
 6 Defendant Bravick would not release any of his unspecified claims.

7 On May 15 and again on June 14, 2023, Defendant Bravick responded that he would not
 8 accept a limited release by DFINITY. Defendant Bravick insisted that any settlement must include
 9 a full unilateral release by DFINITY and must not require any releases of Defendant Bravick's
 10 unspecified claims.

11 Given Defendant Bravick's repeated threats of unspecified counterclaims, DFINITY cannot
 12 agree to his demand for a full release by DFINITY of all of its claims without any reciprocal release
 13 from Defendant Bravick.

14 On May 18, 2023, Defendant Bravick, through counsel, offered to agree to an extended
 15 negotiation period. Plaintiff agreed and on May 19, the parties notified the Court. During this
 16 period, Defendant Bravick has not modified his position on the critical release issue at all, begging
 17 the question of why Defendant Bravick sought additional delay.

18 **2. Defendant's Substantive Position**

19 Mr. Bravick disputes all liability to DFINITY and has sought to settle the matter due to
 20 the relatively low value in relation to litigation expense. Mr. Bravick desires a general release
 21 from DFINITY, releasing all known and unknown claims (including a standard waiver of Cal.
 22 Civ. Code § 1542), which is standard in this type of matter. Mr. Bravick will not accept anything
 23 less than a full release of DFINITY's claims, which is standard in simple cases such as these,
 24 where Mr. Bravick is agreeing to pay a sum of money to DFINITY to end the litigation and buy
 25 peace. A release short of a full general release here would encourage further disputes and result in
 26 piecemeal litigation. DFINITY was obliged to investigate any potential claims against Mr.
 27 Bravick before bringing this action, and therefore it is not unfair or inappropriate for DFINITY to
 28 release any and all unknown claims.

Further, the settlement is unilateral, in that Mr. Bravick is to pay DFINITY a sum of money tied to DFINITY's claims asserted in the Complaint. No claims by Mr. Bravick have been asserted against DFINITY, and no consideration has been included to support a release by Mr. Bravick in favor of DFINITY. Therefore, a mutual release was never anticipated, nor discussed between the Parties, nor appropriate in this matter. It is unfortunate that DFINITY has chosen to derail the potential settlement and prolong this straight-forward litigation, but Mr. Bravick is not willing to succumb to DFINITY's strong-arm tactics and will only agree to a settlement upon reasonable terms.

B. Prospects for Further Negotiation

Plaintiff's Position: DFINITY continues to be willing to negotiate a settlement of its claims. However, the final agreement must include a mutual release of claims. Defendant Bravick has indicated that he will not provide a release of his unspecified claims against DFINITY, which leaves open the possibility of future and piecemeal litigation. DFINITY cannot accept such terms.

Defendant's Position: Mr. Bravick is willing to continue to negotiate the settlement agreement, that result in a general release in his favor and dismissal by DFINITY. Should DFINITY be unwilling to provide a full general release of claims against Mr. Bravick, he does not believe that negotiations are likely to be successful and would prefer to move forward with the matter at the Court's direction. Alternatively, should DFINITY agree to engage in good faith negotiations to purchase a release by Mr. Bravick (to date DFINITY has not done so), Mr. Bravick would certainly participate in further good faith settlement negotiations.

C. Procedural Next Steps

If there is no settlement to be achieved, the parties request that the Court place this matter back on the Court's active docket.

If the case is to proceed, DFINITY requests that the Court grant it 14 days from the date that the case becomes active to file an amended complaint following the Court's order on Bravick's motion to dismiss (Dkt. 23) and the Court's order vacating all pretrial deadlines following the parties' notice of settlement (Dkt. 24 & 25).

1 Mr. Bravick's position is the time for DFINITY to file an amended complaint pursuant to
 2 the Court's Order Granting In Part Mr. Bravick's Motion to Dismiss expired April 12, 2023. *See*
 3 03/29/2023 Order (Doc# 23) (amendment permitted within 14 days). In that respect, the Notice
 4 of Settlement unilaterally filed by DFINITY (Dkt. No. 24, Apr. 12, 2023) did not abate or stay the
 5 deadline to amend, nor did Mr. Bravick authorize or stipulate to any extension.¹ Therefore,
 6 should the matter proceed there should be no further opportunity for DFINITY to amend the
 7 complaint without obtaining further leave pursuant to the Federal Rules of Civil Procedure.

8
 9 Dated: June 16, 2023

Respectfully submitted,

10 CROWELL & MORING LLP

11
 12 By: /s/ Joachim B. Steinberg

13 Gabriel M. Ramsey
 14 Joachim B. Steinberg

15 Attorneys for Defendant
 ERIC BRAVICK

16 Dated: June 16, 2023

BAKER & MCKENZIE LLP

17
 18 By: /s/ Bradford K. Newman

19 Bradford K. Newman
 20 Christina M. Wong

21 Attorneys for Plaintiff
 DFINITY USA RESEARCH, LLC

22
 23
 24
 25
 26 ¹ That Notice of Settlement states that "*the Parties* respectfully request that this Court stay all
 27 proceedings in this action, including the April 12, 2023 deadline for Plaintiff to file an amended
 28 complaint." (Emphasis added). However, counsel for Mr. Bravick was never consulted in that
 respect and would not have agreed to extend that deadline. Therefore it is not accurate that "the
 Parties" requested all deadlines be stayed, including the deadline to amend the complaint.

FILER'S ATTESTATION

I, Joachim B. Steinberg, am the ECF user whose identification and password is being used to file this JOINT STATEMENT IN RESPONSE TO ORDER TO SHOW CAUSE. In compliance with Civil Local Rule 5-1(h)(3), I hereby attest that the other above-named signatories concur in this filing.

DATED: June 16, 2023

/s/ Joachim B. Steinberg

Joachim B. Steinberg